



## REPLY AFFIDAVIT OF JACK B. GRUBMAN

STATE OF NEW YORK                     )  
  )       SS:  
COUNTY OF NEW YORK               )

JACK B. GRUBMAN, being duly sworn, deposes and says:

1. My name is Jack B. Grubman. I am Managing Director and Group Leader of the Salomon Smith Barney Global Telecommunications Team. I have been a telecommunications equities analyst since 1985. Prior to this, I was at AT&T, specifically AT&T Long Lines, where I worked on econometric demand analysis, network engineering and regulatory affairs; I also worked in Corporate Planning where I was involved in divestiture planning and, after divestiture, in business planning. *Institutional Investor* ranked me as the number one Telecommunications Services Analyst in 1998, 1997 and 1994. In addition, I have been ranked a total of 12 times on the *Institutional Investor* All-American Research Team. My direct coverage includes North American telecommunications companies, such as the Regional Bell Operating Companies (“RBOCs”), long distance carriers, competitive local exchange carriers (“CLECs”), and emerging telco carriers. In addition, I head a global research team that covers international telecommunications companies in Europe, Latin America, Japan and the Pacific Rim. I received a B.S. in mathematics at the Massachusetts Institute of Technology and a M.S. in probability theory from Columbia University. The views set forth in this affidavit are my own and not necessarily those of Salomon Smith Barney. Although Salomon Smith Barney

advised SBC Communications Inc. ("SBC") in negotiating the plan of merger with Ameritech Corporation ("Ameritech"), I had no personal involvement in that matter.

### **The New Telecommunications Marketplace**

2. There is no question that business customers, and particularly large and mid-size businesses, are looking increasingly toward having a single carrier provide the bulk of their telecommunications services, both within the United States and abroad. These customers are augmenting local and long distance voice service with sophisticated new data services, and they want to have a primary supplier of telecommunications services with the requisite scale and scope to provide uniformity of service and functionality, and serve as a single point of contact for managing their voice and data needs. Worldwide end-to-end connectivity is the goal.
3. All of the major carriers are positioning themselves to provide the full range of services that large and mid-size businesses demand. The succession of mergers among MCI, WorldCom, MFS, Brooks Fiber and UUNET has created the first entity with the capability to reach 70-90% of the local business lines in the United States and to provide a bundle of local and long distance voice, data and other services in the United States and overseas. AT&T, with its acquisition of Teleport, also is able to reach 70-90% of the local business lines in the United States and provide a bundle of local and long distance voice, data, video and other services. Both MCI WorldCom and AT&T/Teleport have independently reported to various analysts that they currently have the ability to reach 70-90% of the local business lines in the United States. Sprint likewise is deploying its Integrated On-Demand Network ("ION") to serve businesses nationwide and has access to the resources of its two largest

shareholders, Deutsche Telekom and France Telecom, in its Global One partnership. British Telecom, through its venture with AT&T, and Nippon Telegraph and Telephone, through its investments in Teligent and other companies, also are expanding their global capacities to compete for the same customers.

4. The RBOCs are currently not able to offer the full range of services at all of the locations that large and mid-size businesses want from their primary provider of telecommunications services. As a result, they run the risk of losing this critical base of customers. Indeed, the signs of erosion of this customer base are already starkly evident. In the first quarter of 1998, for the first time, CLECs added more net business lines (507,000) than the RBOCs (462,000). The trend accelerated in the second quarter of 1998, with CLECs adding 687,000 net business lines as opposed to the RBOCs' 413,000, and for the third quarter of 1998, the estimated amounts are 751,000 net business lines for the CLECs and 394,000 for the RBOCs. See Chart 1 attached hereto.
5. In my view, which I believe is shared by virtually all other analysts of the telecommunications industry, the RBOCs can ill afford to lose the ability to compete for the revenues that large and mid-size businesses generate. While relatively small in number, these customers provide a significantly disproportionate share of the RBOCs' revenues and an even greater share of their earnings. For Southwestern Bell, the largest 1% of its customers account for 18% of its business revenues. For BellSouth, large businesses account for 61% of its total business lines and approximately 21% of its total revenues. The loss of such customers would deprive the RBOCs of revenues needed to maintain and upgrade their networks and would put

serious pressure on the rates they charge to their mass market customers for whom they have universal service obligations.

**The National-Local Strategy and the SBC/Ameritech Merger**

6. The National-Local Strategy of SBC and Ameritech is a logical and necessary response to the changing needs of their large and mid-size business customers. Facilities-based entry into 30 major out-of-region domestic markets and numerous major foreign markets will enable the new SBC to join MCI WorldCom, AT&T/Teleport, Sprint/Deutsche Telekom/France Telecom and others in competing to serve large and mid-size multi-location businesses by offering bundles of local, long distance and data services as a “local-to-global, end-to-end communications company.”
7. In my judgment, from a shareholder perspective, the SBC/Ameritech merger is absolutely necessary for the new SBC’s National-Local Strategy because the merger spreads the enormous near-term financial burdens of the National-Local Strategy across a larger revenue and shareholder base, which reduces earnings dilution to an acceptable level. In addition:
  - The merger reduces the number of markets that the combined company will have to enter to provide the widespread coverage that customers demand, and this will better enable the combined company to compete with carriers with national footprints, such as MCI WorldCom, AT&T/Teleport and Sprint.
  - The merger increases the number of in-region customers with which the combined company will have existing relationships to build upon and to “follow” into out-of-region markets, and this will better enable the combined company to

compete with carriers with nationwide customer bases, such as MCI WorldCom, AT&T/Teleport and Sprint.

- The merger makes available the experienced management and skilled technical personnel needed to execute the National-Local Strategy in this time of tight labor markets.
8. The up-front costs of deploying 140 switches and 2,900 miles of fiber domestically (and 27 switches and 1,200 miles of fiber internationally), plus installing multiplexing, access and office equipment, and hiring thousands of new employees domestically and internationally, will be substantial. I understand that the combined SBC/Ameritech expects to make \$2 billion in capital expenditures and to spend over \$23 billion on operating expenses over the next 10 years to implement this strategy. SBC projects that its National-Local Strategy will result in cumulative negative cash flow for nearly 10 years. By merging with Ameritech, SBC creates a much larger revenue and shareholder base over which to spread the losses associated with the National-Local Strategy and thus reduce earnings dilution to an acceptable, single-digit level. In addition, of course, the merger creates various synergies that also will help to offset the start-up costs of the National-Local Strategy. The overall result is a transaction that, for the combined company on an overall basis, will be 7% dilutive in 2000, 3% dilutive in 2001, and accretive thereafter. By contrast, if SBC were to attempt the National-Local Strategy without the merger, I estimate that SBC would experience approximately *twice* the dilution and would have to wait approximately *twice* as long for the venture to become accretive, and, in my view, SBC's

shareholder base would not tolerate such double-digit dilution with such a distant payoff.

### **Differences Between Established and Start-Up Carriers**

9. Companies like SBC, Ameritech and the other established carriers have conservative individual and institutional shareholders who demand steady earnings growth and regular dividends. Ameritech, for example, estimates that 57.4% of its stock is held by individuals, the median age of whom is 70, and two-thirds of whom are over 65. SBC's investor base has a similar demographic profile. Such shareholders value stock in traditional fashion, based on price-to-earnings ratios and dividend yields. In contrast, start-up carriers (such as CLECs) have risk-tolerant, growth-oriented investors who value stock first based on the "concepts" underlying the business. Once earnings begin to be realized, these companies then will begin to be valued by earnings before interest, taxes, depreciation and amortization ("EBITDA") or discounted cash flows. For growth-oriented investors, the substantial start-up losses of facilities-based local market entry are both expected to occur and acceptable, while conservative investors will tolerate such losses only if they have a minimal overall effect on short-term earnings. Thus, companies, such as new CLECs, with risk-tolerant, growth-oriented investors do not require the same scale as do SBC and Ameritech – or AT&T, MCI, GTE or Bell Atlantic for that matter – in order to launch widespread and costly new initiatives.
10. Analysts and shareholders of the major carriers have consistently reacted negatively when those carriers took actions that would have the effect of substantially diluting their short-term earnings. Some of the clearest examples are:

- MCI. In January 1994, MCI announced plans for facilities-based local market entry through a new subsidiary called MCI Metro. From that point, until November 1996, when British Telecom announced that it would buy MCI, MCI's stock substantially underperformed both Sprint and WorldCom, even though MCI's core long distance business performed admirably during this period. In my view, the underperformance was the direct result of investor intolerance for the short-term earnings dilution that would result from the MCI Metro initiative. See Chart 2 attached hereto.
- GTE. On May 5, 1997, GTE announced plans to purchase an Internet service provider, BBN, and to acquire dark fiber from Qwest. From that point until July 28, 1998, when Bell Atlantic announced plans to acquire GTE, GTE's stock underperformed the RBOCs, even though GTE's core local telephone business was growing faster than the RBOCs. I believe that this underperformance was the direct result of investor intolerance for the earnings dilution (slightly more than 10 percent in ensuing 12 month period) that resulted from GTE's acquisition of BBN and the Qwest dark fiber. GTE's conservative investor base – which is largely identical to SBC's – reacted negatively, despite the fact that the strategic initiatives were widely applauded, and this underscores our view that companies like SBC cannot pursue strategic alternatives that result in double digit earnings dilution. See Chart 3 attached hereto.
- Bell Atlantic. On October 13, 1993, Bell Atlantic announced plans to buy TCI and Liberty Media and to invest heavily in upgrading TCI's cable



facilities to provide telephone service. In an effort to comfort Bell Atlantic's conservative, income-oriented shareholders, the transaction included a different class of stock for the combined company's growth-oriented operations. Bell Atlantic's share price nevertheless fell from \$67.625 on the day after the deal was announced to \$52.75 on February 23, 1994, when the deal was called off. I believe that the decline in Bell Atlantic's share price and subsequent collapse of the merger was in large part attributable to the concerns of Bell Atlantic's shareholders about earnings dilution.

- AT&T. AT&T's stock has performed poorly since June 24, 1998, when it announced plans to acquire TCI and make major investments to provide telephone service through TCI's cable television facilities (AT&T's stock was down as much as 30% on August 31, 1998 from its price on the day before the TCI transaction was announced, and is currently down 5.8%). I attribute the bulk of this decline to the decision of conservative investors to sell AT&T's stock because AT&T is becoming involved in a large start-up venture with high initial costs that will substantially dilute earnings in the short term. In planning their merger, AT&T and TCI attempted to appease conservative investors by creating two tracking stocks, one that would follow the new company's traditional businesses and one that would follow the new company's high growth businesses.

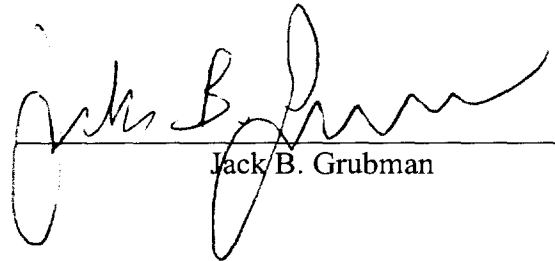
11. I believe that MCI's decision to merge with WorldCom and GTE's decision to merge with Bell Atlantic plainly show that such mergers – like the SBC/Ameritech merger – are necessary to counteract the dilution that stand-alone expansion would produce.

The creation of tracking stocks or other new capital structures would not enable either SBC or Ameritech to execute the National-Local Strategy alone. AT&T and TCI attempt to use a tracking stock to combine a growth-oriented business with an income-oriented business. Despite this effort to appease investors with a tracking stock structure, the AT&T stock price has still not returned to the level at which it was trading prior to the announcement of the AT&T/TCI merger. During this same period, AT&T's two principal competitors, MCI WorldCom and Sprint, have seen their stock prices rise 12% and 5%, respectively, in absolute terms. While in some circumstances, a tracking stock structure might be successful, in my judgment, such a structure would not be well received by shareholders of SBC or Ameritech. While tracking stocks were created almost 15 years ago, only limited use has been made of them, and for good reason. They cause serious conflicts of interest as a company's board of directors attempts to allocate resources, costs and opportunities among the business units that the different classes of stock track. To avoid these problems, business units end up being operated separately, which limits synergies, and the end result is often spin-offs, as happened with U S West Media Group (now known as Media One), which began as a tracking stock of U S West. Moreover, the purpose of the National-Local Strategy is to offer integrated services nationally and globally, not to offer stand-alone services. Creating a stand-alone tracking stock for an integrated offering does not make sense. In addition, the complex capital structures associated with tracking stocks can be difficult for investors to evaluate, resulting in lower stock prices. Furthermore, such tracking stocks do not shelter the assets of less risky business units from the claims of creditors of more risky business units. For these

reasons, I believe that the creation of a tracking stock would not be a workable vehicle by which either SBC or Ameritech alone could execute a National-Local Strategy, which is critical to their ability to compete in the new telecommunications marketplace.

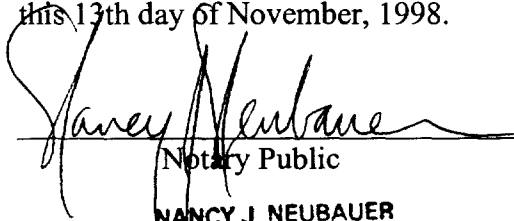
12. Thus, I agree that the merger of SBC and Ameritech is necessary to execute the National-Local Strategy successfully. Without the merger, SBC and Ameritech alone would start from a smaller base and thus have to enter more markets, and each would have fewer customers to follow out of region. Neither company alone would have the human resources needed to execute the National-Local Strategy. More serious still from an investor's perspective, the losses associated with implementation of the National-Local Strategy by either SBC or Ameritech on a stand-alone basis would cause serious damage to their stock price. That could undermine their commitment to an out-of-region strategy, or if they proceeded, it in turn would increase their cost of capital, which would be further damaging to companies like SBC and Ameritech that are involved in a capital intensive business. The result could be a downward spiral for either company.

I declare under penalty of perjury that the foregoing statements are true and correct.



Jack B. Grubman

Subscribed and sworn to before me  
this 13th day of November, 1998.



Notary Public

**NANCY J. NEUBAUER**  
Notary Public, State of New York  
No. 01NE5041602  
Qualified in New York County  
Commission Expires April 10, 1999

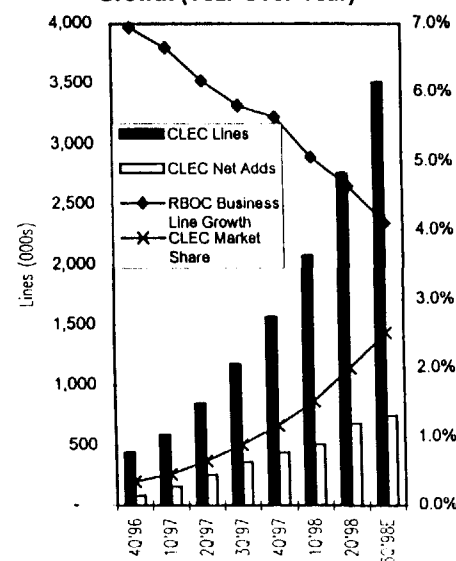
Chart 1

**SALOMON SMITH BARNEY****Impact of CLECs on RBOC Business Lines**

	Quarterly Net Adds (Lines in 000s)								YOY Growth In Net Adds				YOY Growth In Net Adds			
	4Q'96	1Q'97	2Q'97	3Q'97	4Q'97	1Q'98	2Q'98	3Q'98	1Q'97	2Q'97	3Q'97	4Q'97	1Q'98	2Q'98	3Q'98	
<b>RHCs-Business</b>																
Ameritech*	87	122	66	112	105	85	17	52	2.5%	-38.3%	2.8%	20.7%	-30.3%	-74.2%	-53.6%	
Bell Atlantic	152	151	156	147	131	106	140	124	-1.9%	-28.4%	-18.8%	-13.8%	-29.8%	-10.3%	-15.6%	
BellSouth	93	122	82	94	58	60	56	62	-15.9%	-46.1%	-19.7%	-37.6%	-50.8%	-31.7%	-34.0%	
SBC	177	201	205	204	174	171	152	137	2.8%	-1.4%	-4.1%	-1.7%	-14.9%	-25.7%	-32.9%	
-PAC	89	98	96	89	88	81	77	59	-5.2%	-5.4%	-18.1%	-1.6%	-17.3%	-19.9%	-33.6%	
-SWBT	85	99	107	115	84	92	70	76	12.2%	3.7%	14.2%	-2.2%	-7.1%	-34.4%	-34.0%	
US WEST*	62	81	64	49	69	40	48	19	-37.7%	60.0%	-46.2%	11.3%	-50.6%	-25.0%	-61.2%	
<b>Total RHCs - Business</b>	<b>571</b>	<b>677</b>	<b>573</b>	<b>606</b>	<b>537</b>	<b>462</b>	<b>413</b>	<b>394</b>	<b>-9.0%</b>	<b>-21.0%</b>	<b>-14.7%</b>	<b>-5.9%</b>	<b>-31.8%</b>	<b>-27.9%</b>	<b>-35.0%</b>	
<b>CLECs</b>																
Teleport	13	32	32	47	33	43	66	75								
WorldCom*	37	56	67	98	103	125	155	177								
McLeodUSA (excluding CCI in 4Q'97 net adds)	0	6	15	19	20	24	27	22								
Intermedia	7	10	13	20	31	28	41	32								
ICG	0	5	15	30	42	45	51	54								
NEXTLINK	2	3	6	14	19	23	30	31								
e.spire Communications (formerly ACSI)	0	0	9	19	15	14	36	34								
GST	3	7	2	2	15	16	27	30								
Electric Lightwave	5	6	6	4	3	3	13	8								
Hyperion	0	1	1	4	6	11	24	30								
MGC Communications	0	1	3	1	1	2	3	5								
Optel	1	1	1	1	2	1	1	2								
RCN	2	0	3	8	15	17	28	18								
Shared Technologies	5	5	5	2	(4)	4	NA	NA								
USN Communications	4	10	47	51	55	54	50	50								
WinStar	2	5	17	21	31	41	50	60								
Frontier	1	6	8	9	12	16	27	37								
US LEC	NA	0	4	11	34	26	27	49								
ITC Deltacom	NA	NA	NA	NA	3	7	7	8								
MetroNet	NA	NA	NA	NA	4	7	14	15								
Allegiance	NA	NA	NA	NA	NA	NA	8	15								
<b>TOTAL CLECs</b>	<b>80</b>	<b>156</b>	<b>253</b>	<b>361</b>	<b>442</b>	<b>507</b>	<b>687</b>	<b>751</b>								
<b>Total RHC &amp; CLEC Bus. Line Net Adds</b>	<b>652</b>	<b>832</b>	<b>825</b>	<b>967</b>	<b>979</b>	<b>969</b>	<b>1,100</b>	<b>1,145</b>								
<b>CLEC % of RBOC bus. net adds</b>	<b>14%</b>	<b>23%</b>	<b>44%</b>	<b>60%</b>	<b>82%</b>	<b>110%</b>	<b>166%</b>	<b>191%</b>								
<b>CLEC % of Total Business Line Net Adds</b>	<b>12.3%</b>	<b>18.7%</b>	<b>30.6%</b>	<b>37.4%</b>	<b>45.1%</b>	<b>52.4%</b>	<b>62.4%</b>	<b>65.6%</b>								

**CLEC Lines vs. RBOC Business Lines Growth (Year-Over-Year)**

Quarter	CLEC Lines (000s)	CLEC Net Adds (000s)	RBOC Business Line Growth (%)	CLEC Market Share (%)
4Q'96	450	100	6.8	0.8
1Q'97	550	150	6.2	0.9
2Q'97	800	250	5.5	1.1
3Q'97	1150	350	4.8	1.3
4Q'97	1550	450	4.2	1.5
1Q'98	2050	550	3.5	1.8
2Q'98	2700	650	2.8	2.2
3Q'98	3500	750	2.2	2.6

**CLEC Lines vs. RBOC Business Lines Growth (Year-Over-Year)**

\*US WEST and Ameritech are normalized for exchange sales; WCOM includes Brooks and MFS.

Note: Some companies have not yet reported 3Q98 net adds; thus, we have made our own estimates for those companies in bold.

Source: Company reports, Salomon Smith Barney Estimates.

Chart 2

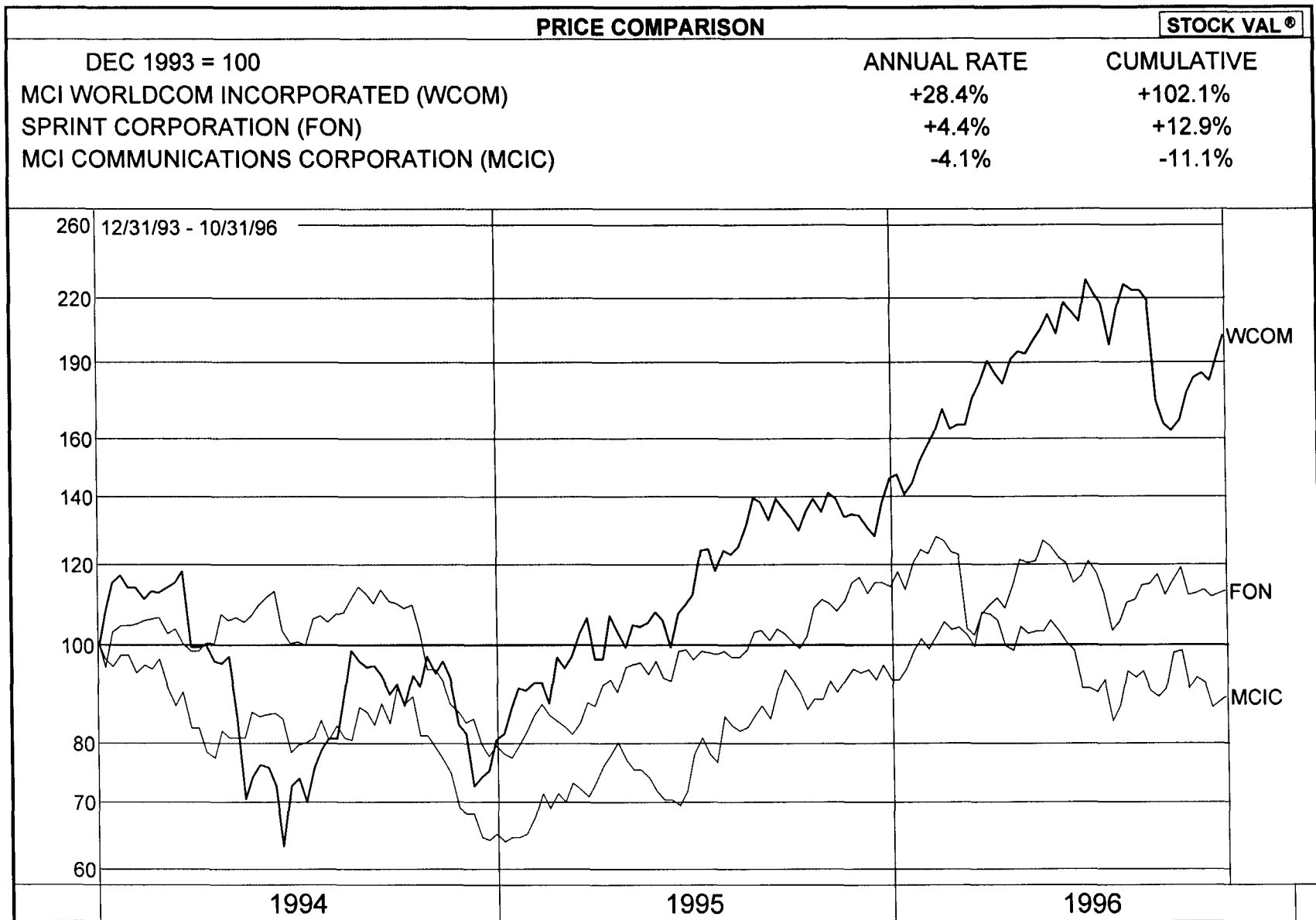
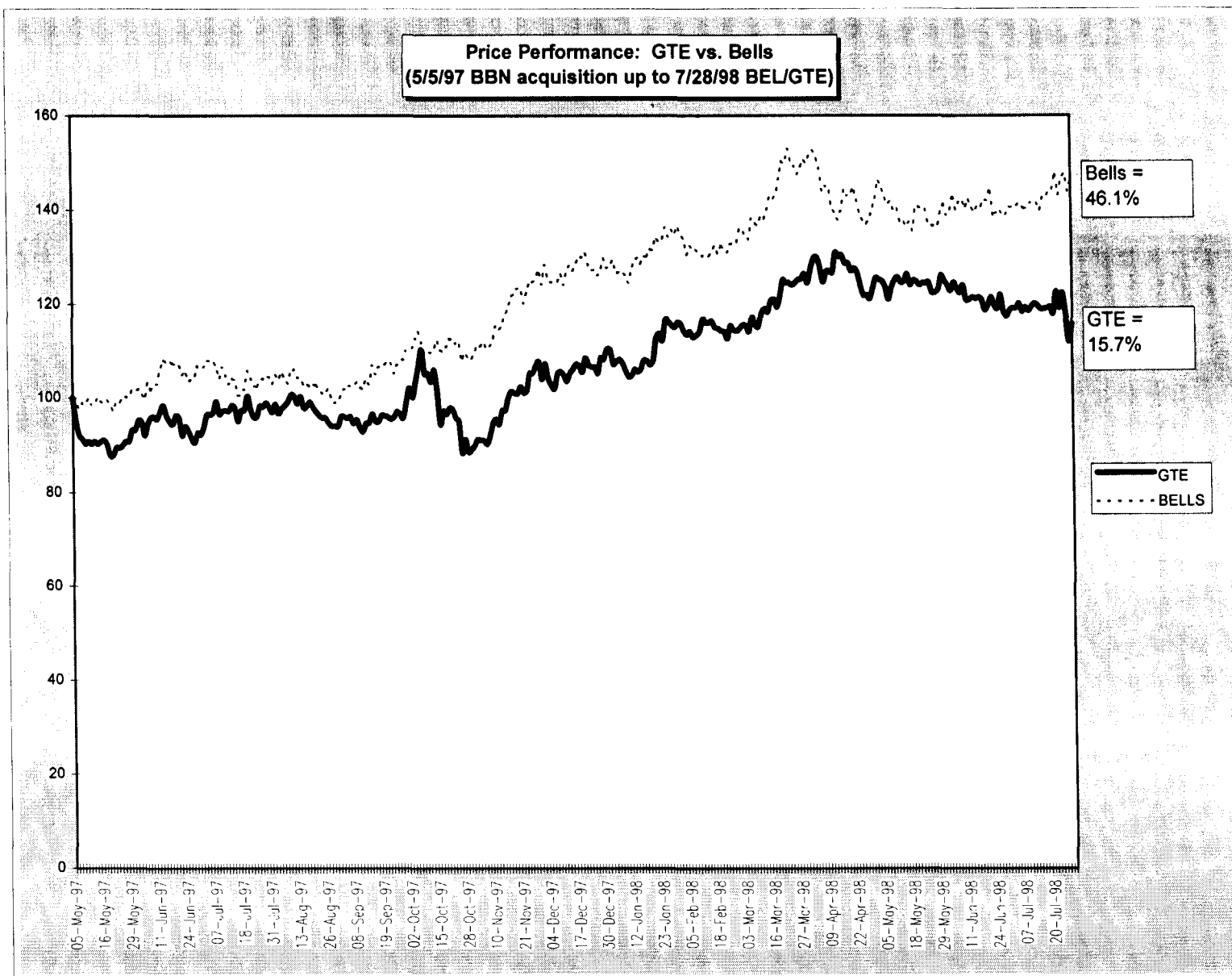


Chart 3



**Reply Affidavit of  
Henry M. Rivera**



## REPLY AFFIDAVIT OF HENRY M. RIVERA

WASHINGTON )  
 )  
DISTRICT OF COLUMBIA ) SS:

HENRY M. RIVERA hereby states and affirms as follows:

1. My name is Henry M. Rivera. I was a Commissioner on the Federal Communications Commission ("FCC" or the "Commission") from 1981 to 1985. During my time with the Commission, I also served as Supervisory Commissioner for the FCC Industry Advisory Group on Revision of the Uniform System of Accounts. I have published numerous articles on telecommunications issues and spent time on several advisory boards, including five years with the Board on Telecommunications and Computer Applications, an agency of the National Research Council. I am currently a member of the law firm of Shook, Hardy & Bacon L.L.P., located at 1850 K Street, N.W., in Washington, D.C.

2. I submitted an affidavit in 1994 on behalf of the Bell Operating Companies (BOCs) to support their motion to vacate the Modification of Final Judgment.<sup>1</sup> In that affidavit, I explained that the FCC had sufficient resources to monitor compliance with and enforce its regulatory requirements. Among other things, I mentioned the FCC's ability to use the BOCs as benchmarks to enforce its equal access and network information disclosure rules. I also pointed out the enforcement value of numerous competing telecommunications companies, which collectively formed a class

---

<sup>1</sup> Affidavit of Henry Rivera, Richard Firestone, and Albert Halprin, Memorandum of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and

Footnote continued on next page

of sophisticated and aggressive whistleblowers, well-positioned to detect and inform the FCC of any discrimination.

3. SBC Communications Inc. asked me to provide this affidavit to address whether the role of benchmarks has changed since I submitted my affidavit in 1994, and, in particular, whether its proposed merger with Ameritech will impede the FCC's ability to regulate by eliminating a relevant benchmark. Because of my extensive experience as a regulator with the Commission and as a private practitioner of communications law for 13 years, I am intimately familiar with the telephone industry and the necessary conditions for effective regulation of that industry.

#### The Local Exchange Service Market Prior to the Telecommunications Act of 1996

4. When I submitted my affidavit in 1994, the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act" or "Act") had not yet been passed. Consequently, competition in the local exchange service market was relatively sparse. The BOCs also faced little competition in the switched access market, so IXC's had few sources of exchange access. As a result, the Commission had few sources of comparison. In the absence of this information, the Commission justifiably relied upon the Bell companies as benchmarks for one another to enforce its equal access and disclosure rules. They were not perfect benchmarks, to be sure, which is why I noted in my affidavit that comparisons among them "alone cannot conclusively resolve whether

---

Footnote continued from previous page

Southwestern Bell Corporation in Support of Their Motion to Vacate the Decree, *United States v. Western Elec. Co.*, No. 82-0192 (filed D.D.C. July 6, 1994) ("*Rivera Affidavit*").

discrimination has occurred.”<sup>2</sup> But they provided some helpful information, and their existence--from a regulatory perspective, at least--was certainly an improvement over the situation the Commission faced before the Decree “when the Bell Companies were all part of a single integrated entity.”<sup>3</sup>

5. The detection of interconnection problems was easier when I submitted my affidavit than in the past because of another key factor: the break-up of the Bell System resulted in numerous purchasers of BOC access services who could blow the whistle on discrimination. Interexchange carriers, competitive access providers, wireless service providers, equipment manufacturers, information service providers, and end users all purchased BOC access services, and the BOCs themselves were also each others’ customers for local exchange services. Because it was in the interest of all of these companies to have full and fair connection of their networks, they could be relied upon to report any discrimination to the Commission. Many of the whistleblowers were also telecommunications giants in their own right, such as AT&T, that dwarfed the BOCs in size and resources. These companies were familiar with the technology, the industry, and their rights, and were willing to commit substantial resources to protect their interests.<sup>4</sup>

#### The Local Exchange Service Market Today

6. Competition in the telecommunications world of today bears little resemblance to competition in the telecommunications world when I submitted my

---

<sup>2</sup> *Rivera Affidavit* ¶57.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶59.

affidavit. The Commission no longer faces a regulatory landscape bereft of sources of comparison. Interexchange carriers such as AT&T, Sprint and MCI are no longer merely purchasers of switched access service; today--in part because of their mergers with CAPs (MFS, Brooks and TCG)--they are interconnecting with ILECs and competing directly against them in providing this service. Similarly, other independent local exchange carriers such as Frontier and ALLTEL are going head-to-head against the BOCs in markets across the country.

7. As the following table<sup>5</sup> demonstrates, local competition is increasing at a rapid pace:

---

<sup>5</sup> From New Paradigm Resources Group, Inc. and Connecticut Research, Inc., *1995/96 Local Telecommunications Competition*, 7<sup>th</sup> Ed., 1995; New Paradigm Resources Group, Inc. and Connecticut Research Inc., *1998 Annual Report on Local Telecommunications Competition*, 9<sup>th</sup> Ed., 1998; *Local Phone Markets Are Open to Competition* (visited Nov. 11, 1998) <<http://www.telecompolicy.net/comp/opencomp.html>>. The numbers in the table reflect an analysis of data as of 1997 and are based on only the CLECs that New Paradigm Resources tracks. Rapid growth continues and current estimates of the numbers of CLECs are much higher. See, e.g., Jose Verger, *Competition with a capital 'C'*, *Telephony*, Oct. 19, 1998 available at 1998 WL 6611796.

	1995	1997
Total CLECs	36	110
Total Revenue	\$1.29 B	\$4.5 B
Network Route-Miles	21,414	78,506
Network Fiber-Miles	695,055	3,893,838
Buildings Connected	9,003	60,403
Capital Invested	\$4.2 B	Raised over \$15 B
Switches Installed	65 (total)	329 (voice) 331 (data)

8. The source of this change is obvious. The 1996 Act has dramatically altered the competitive environment. Section 251 of the Act has made interconnection the norm, for the BOCs, for other ILECs, for CLECs and others. The BOCs are no longer unique providers of local exchange and switched access service.

9. In 1994, I noted that interexchange carriers, competitive access providers, wireless service providers, equipment manufacturers, information service providers, and end users were effective whistleblowers because they purchased access service from the BOCs. Today, these same groups are not only purchasers, many are direct competitors as well. As such, they are not only effective whistleblowers, but they themselves are

benchmarks to which the Commission can turn for assistance in its regulation of the industry.

10. In 1994, I noted that many of the whistleblowers were especially effective because they were “telecommunications giants in their own right.” Today, those giants are not just negotiating agreements with local exchange carriers; they themselves are local exchange carriers, and are likewise a source of information. Sprint, MCI, AT&T-- they are all offering local exchange and access service, including switched access service. They are still effective whistleblowers--indeed, as competitors, their reporting incentives are even greater. But their entry into the local exchange market makes them even more valuable to the Commission as benchmarks. The size and resources of these companies are now devoted to local exchange service, and their “familiarity with the technology, the industry, and their rights” is being put to use to compete with incumbent local exchange carriers in all of their core markets.<sup>6</sup>

11. The new regime created by the Act has also opened up new avenues of information to the Commission. The Commission can compare local exchange providers against one another by viewing the multitude of interconnection agreements that have been negotiated. The Commission can look to additional statutory sources of information, such as the state arbitration proceedings and any federal review proceedings. Moreover, the Commission may rely upon the enormous amount of data that has been and will continue to be submitted in the ARMIS reports. For example, Ameritech currently submits separate ARMIS data for each of the states in which it provides local service, and the merger with SBC will not alter that fact.

12. The Commission's role in this new environment is fundamentally different than it was when I submitted my affidavit in 1994. Instead of imposing rates and conditions, the Commission's primary role is now that of an overseer and arbitrator of interconnection among hundreds of companies.

#### Sources of Benchmarking Data Relating to New Entrants

13. In this new environment, the Commission no longer must rely predominantly upon the BOCs for comparisons and data. That more limited benchmarking model was valuable when few other sources of information were available. Today, however, the Commission can and should look well beyond the BOCs to regulate effectively.

14. The Commission can use the abundance of objective data at its fingertips in publicly filed documents. The Commission can look to *all* local exchange providers in each local exchange market. The Commission can look *within* the BOCs, at each operating unit, and it can look *beyond* the BOCs, to independent local exchange carriers and CLECs.

15. In this context, the presence or absence of a single ILEC holding company does not impair the Commission's ability to regulate.

16. In fact, as competition increases, the need for benchmarking and the direct regulation it supports correspondingly decreases. The current state of the market does not entirely eliminate the Commission's need to gather information, but the important

---

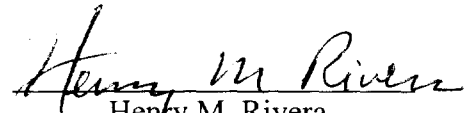
Footnote continued from previous page

<sup>6</sup> Cf. Rivera Affidavit ¶59.

information now comes from interconnection agreements, ARMIS reports, state arbitration and federal court proceedings, and *all* local exchange carriers, which includes each individual operational unit within the BOCs, CLECs, independent local exchange carriers, and other incumbent local exchange carriers, IXC's, and others.

17. This merger will not eliminate any of the sources of information that are relevant in the current market for local exchange, so the Commission's ability to benchmark and to regulate will not suffer from the merger.

I declare under penalty of perjury that the foregoing statements are true and correct.

  
Henry M. Rivera

Sworn and subscribed before me  
this 13 day of November, 1998.

  
NOTARY PUBLIC

My Commission expires 5/14/03